UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO	CONFIRMATION NO
08/884,146	06/27/1997	DOUGLAS P. MARQUIS		5911

7590 01/28/2004

JAMES P RYTHER
RUDNICK& WOLFE
203 NORTH LASALLE STREET
SUITE 1800
CHICAGO, IL 60601

EXAMINER	
WEINSTEIN, STEVEN L	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED 01/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	08/884,146	MARQUIS, DOUGLAS P.
	Examiner	Art Unit
	Steven L. Weinstein	1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on 23 October 2003.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 6-16 is/are pending in the application.

4a) Of the above claim(s) 14-16 is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 6-13 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d)

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

13)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a) ☐ The translation of the foreign language provisional application has been received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

Newly submitted claims 14-16 are directed to an invention that is independent or distinct from the invention originally claimed. The invention originally claimed was only directed to bags, i.e. articles claims. The newly submitted claims 14-16 are to a method of proportioning a bulk food supply. The bags could be used to contain any product, edible, inedible, pharmaceuticals, etc. The bags could be used to store the leftovers from a single home cooked meal or leftovers from a take-out meal.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 14-16 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 6, 7, 10, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over applicants admission of the prior art as further evidence by Tenner et al, further in view of ESTY, Melitta, Kramer, Yuen, Hain, Plakas, Brumley, Fear, Jensen. ('273), Wolf and Clement for the reasons fully and clearly detailed in the last Office action mailed 4/18/03.

New independent claim 10 only differs from originally presented independent claim 6 in the recitation that the blocks are capable of being marked by a making pen. However, as noted in the last Office action, applicant' admission of the prior art as well as Clement discloses the conventionality of making an indicia containing surface capable of being marked by a marker.

Claims 8,9, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 8 above, and further in view of Jenson who is applied for the reasons given in the last Office action.

All of applicant's remarks, filed 10/23/03, have been fully and carefully considered but are not found to be convincing. Applicant urges that none of the secondary art, all of whom teach multiple indicia options, disclose a bag. It is not necessary for the secondary art to specifically teach a bag for the rejection to be proper. This is because, applicants admission of the prior art and Tenner et al already teach a printed bag containing indicia to allow one to indicate a time factor. The secondary art is relied on to teach that containers/receptacles can be provided with multidated indicia. The Board of Appeals has already agreed with the evidence of obviousness by affirming the examiner in the Decision mailed 9/30/02. Applicant also urges that none of the secondary references disclose the concept of food proportioning. This urging is also not convincing for the reasons given above. That is, these references are not being relied on for food preportioning nor do they have to teach this for the rejection to be proper since applicant's admission of the prior art and Tenner already teach food preportioning. Applicant is arguing the references separately as if they were applied alone in a vacuum. The references are combined under 35USC 103, obviousness, not 35USC 102, anticipation. Applicants urging that applicants admission of the prior art and Tenner et al, "teach away" from the invention is also not convincing. Neither of the references discloses that one must only have one day of the week printed on the bag. Obviously, if Tenner et al disclosed printing all of the days of the week, the rejection would have been under 35 USC 102, anticipation. Finally, in regard to the urging

concerning the blocks being capable of being marked by a marking pen, this urging has been addressed above.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Weinstein whose telephone number is (571) 272-1410. The examiner can normally be reached on Monday-Friday 7:00am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

S. weinstein/af
January 21, 2004

Ste Wat
STE[illegible]
P[illegible] 1761
Rem 8A69
1/27/04